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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,014	02/08/2005	Aurelio Romeo	5098-0101PUS1	7574

2292 7590 03/13/2006

BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

EXAMINER
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MAHAFKEY, KELLY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/524,014	<b>Applicant(s)</b> ROMEO, AURELIO	
	<b>Examiner</b> Kelly Mahafkey	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 12-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 2-11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/6/05</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 1-11 in the reply filed on January 23, 2006 is acknowledged. The traversal is on the ground(s) that Gallaher teaches of net total solids and not soluble solids. This is not found persuasive. Applicant correctly pointed out that Gallaher teaches of net total solids. Examiner acknowledges that typographical error was made. However, the rejection the arguments are not found persuasive because Gallaher teaches of a tomato paste with a total of at least 24% total solids (as acknowledge by applicant), and as examiner noted, a paste as defined by one of ordinary skill in the art contains about 32% soluble solids (and about 68% insoluble solids). Thus, Gallaher teaches of a tomato paste which has 24% total solids, about 30% of which are soluble solids and about 70% of which are insoluble solids.
2. The requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

### ***Specification***

3. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.
4. Applicant is reminded of the proper content of the disclosure should include a Brief Description of the Views of the Drawings. See MPEP § 608.01(f). A reference to and brief description of the drawing(s) is required as set forth in 37 CFR 1.74.

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5. The specification includes amendments (Pages 9 and 13), which are not proper. Hand written amendments will not be acknowledged by the examiner as they are illegible and cannot be understood. Applicant is advised to submit a new computer generated copy without any illegible (i.e. handwritten) information. For the purpose of examination, the specification will be read without the acknowledgement of the amendments.

### ***Claim Objections***

6. Claims 5-11 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend on any other multiple dependant claim. See MPEP § 608.01(n). Accordingly, the claims 5-11 have not been further treated on the merits.

7. Claims 1-11 are objected to because of the following informalities: The claims include amendments (Pages 9 and 13), which are not proper. Hand written amendments will not be acknowledged by the examiner as they are illegible and cannot be understood. Applicant is advised to submit a new computer generated copy without any illegible (i.e. handwritten) information. Appropriate correction is required. For the purpose of prior art comparison, examiner will consider the claims as computer generated, the handwritten (i.e. illegible) amendments will not be considered by examiner.

### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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9. Claims 2-4 recites the limitation "comprising tomato products of claim 1 [or 2 or 1-3]". There is insufficient antecedent basis for this limitation in the claim. Claim 1 does not recite "tomato products." For the purpose of prior art comparison the claims will be interpreted as reciting "tomato composition".

10. Claim 4 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to the other claims in the alternative only. See MPEP § 608.01(n).

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Glasser et al. (US 4140809).

13. Glasser et al. (Glasser) discloses of a vegetable composition (i.e. a composition obtained from vegetable juices and pastes) have dry residue of 4-12% and water of 88-96%. Column 3 lines 9-22 Glasser teaches that the soup concentrate is to be mixed with approximately 3-10 parts water. Column 4 lines 9-23 Glasser teaches that the soup concentrates have a moisture content of 40-60%. The solid residue of the concentrate would constitute the total solid matter in the final composition.

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a. The following depicts the percentage of solid matter in the final composition when 1 part of soup concentrate (40% moisture content) is mixed with 3 parts water:

- i. 3 parts or 75% water
- ii. 1 part or 25% Soup Concentrate (40% moisture content)
  - (1) 40% of the concentrate is water
    - (a)  $25\% * 0.40 = 10\%$  water is in the concentrate
  - (2) 60% of the concentrate is dry residue
    - (b)  $25\% * 0.60 = 15\%$  dry residue is in the concentrate

Thus, the final composition would have a total of 85% water (75% water + 10% water) and 15% dry residue.

b. The following depicts the percentage of solid matter in the final composition when 1 part of soup concentrate (60% moisture content) is mixed with 10 parts water:

- iii. 10 parts or 91% water
- iv. 1 part or 9% Soup Concentrate (60% moisture content)
  - (3) 60% of the concentrate is water
    - (c)  $9\% * 0.60 = 5.4\%$  water is in the concentrate
  - (4) 40% of the concentrate is dry residue
    - (d)  $9\% * 0.40 = 3.6\%$  dry residue is in the concentrate

Thus, the final composition would have a total of 95.4% water (91% water + 5.4% water) and 3.6% dry residue.

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Glasser thus teaches of a vegetable product with a range of 85-95.4% water and 3.6-15% dry residue. Glasser teaches that of the dry residue, 10-40% is insoluble and 60-90% is soluble (Column 4 lines 9-23). Glasser teaches that the vegetable can include tomatoes, thus the soup can be a tomato composition from tomato juice (Example 2). Glasser teaches that one would modify the amount of soluble and insoluble solids depending on the desired freezing properties of the soup concentrate (Abstract, Column 1 lines 19-52, Column 2 lines 53-68, and Column 3 lines 1-12). Glasser teaches of the vegetable composition in admixture with animal and vegetable fats which are solid or liquid at room temperature (Examples 1-3).

### ***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.
15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic  
Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, appearing to read "Kelly Mahafkey", followed by the date "3/6/02".

Kelly Mahafkey  
Examiner  
Art Unit 1761

A handwritten signature in cursive script, appearing to read "Keith Hendricks".

**KEITH HENDRICKS**  
**PRIMARY EXAMINER**